defendant, on the other hand is to the effect that the defendant is not in breach because it was asked not to proceed with the next course of obligation under the agreement, that is, the approval of the building plan. The plaintiffs wanted to stay on the project land longer to wait for the price of houses to rise. To my mind this is a serious question to be tried. The three memoranda of transfer of the said land were registered in the third week of May 1983. See exhibits "B1", "B2" and "B3" to the first affidavit of the plaintiffs. Clause 4 of the said agreement requires the submission of applications for amalgamation and subdivision of the said land within two months from the date of registration of the memoranda. If this was not done by the defendant, the cause of action for the breach would have arisen around July 1983. The defendant has tendered as evidence that it had done so by a letter dated 14 July 1983: see exhibit CSL-1. Of course, the plaintiffs deny knowledge of the defendant's action. The said agreement made no mention that such action by the defendant needs to be notified to the plaintiffs. Clause 5(a) requires the defendant to submit the engineering plans within 6 calendar months from the date of approval of subdivision and mutation. Exhibit CSL-2 of the defendant shows that it was done on 23 May 1984. Exhibit CSL-3 dated 28 February 1985 is the approval of the engineering plans given by the authority. Clause 5(b) of the said agreement requires the defendant to submit the building plans and specification for approval within 6 calendar months from the date of approval of the engineering plan. It was this step of the obligation of the defendant under the said agreement that was not done. Naturally without the building plans and specification approved, the building of houses cannot take place. On the evidence available in CSL-3 the cause of action would appear to begin to run six months after such approval of the engineering plan given. But these issues are in dispute. It can be resolved only at the full trial of the action and affidavit evidence alone would not help to resolve the issue.

So for the reasons given, the SAR was wrong in granting the summary judgment to the plaintiffs on their application under O. 81 of the RHC where triable issues are involved. I therefore set aside the order, dismiss the application of the plaintiffs, and order that the suit shall proceed to trial. Costs of appeal and the Court below to appellant to be taxed unless agreed.

THE CO-OPERATIVE CENTRAL BANK LTD. (IN RECEIVERSHIP) & 2 ORS.

v.

THE INDUSTRIAL COURT OF MALAYSIA & 3 ORS.

HIGH COURT, KUALA LUMPUR
DATO' HJ. ABU MANSOR BIN ALI J.
[ORIGINATING MOTION NO. R8-25-135-89]
23 MARCH 1994

RECEIVERS: Court appointed - Pursuant to Emergency Regulations - Prior leave of Court to sue required - Decision of Supreme Court - To be accorded respect by the High Court - Judicial precedents - Personal liability of receivers - No question of - Unjust to make receivers personally liable - Will frighten away would be future receivers.

Tuan Haji Zainal Abidin Putih and Tuan Haji Ahmad Kamal Bin Abdullah Al-Yafii, the 2nd and 3rd Applicants were appointed receivers of the 1st applicant The Co-operative Central Bank Ltd. ("CCB"), by an order of the Court dated 7 March 1989. As receivers, they were charged with the duty to manage and assume the duties of the directors of CCB.

In proceedings instituted in the Industrial Court in Malaysia by a number of ex-employees of CCB, the Industrial Court rejected an objection taken on behalf of the applicants that prior leave of the Court has got to be obtained before the ex-employees can proceed against them as the receivers of CCB, and handed down an award, holding that no such leave was required. The Industrial Court further in its award ordered that the applicants as the receivers of CCB be joined as a party to the proceeding in the said Court, in their personal capacity.

The applicants applied to the High Court for an order of *certiorari* to remove into the High Court the award of the Industrial Court for the purpose of it being quashed and for a further order of *prohibition* to prohibit the Industrial Court from proceeding further with the cases before that Court.

Issues:

1. Was prior leave of the High Court necessary before proceedings could be instituted in the Industrial Court against the applicants, receivers of CCB?
2. Was the Industrial Court in error, in law, in ordering the applicants to be joint in as

parties in their personal capacity, in the matters that were before that Court?

Held:

[1] Applying the decision of the Supreme Court in *Wong Pot Heng v. The Co-operative Central Bank Ltd.* - prior leave of the Court is required to sue the applicants as the receivers of CCB.

[2] The decision of the Supreme Court in *Wong Pot Heng v. The Co-operative Central Bank Ltd.*, must be accorded respect by the High Court, following judicial precedents.

[3] The Industrial Court had acted on wrong principles in ruling that prior leave is not required before proceeding against the applicants as the receivers of CCB.

[4] Prior leave of the Court is a condition precedent in bringing an action against receivers appointed by the Court.

[5] Following the decision in *Bank Negara Malaysia v. Co-operative Central Bank Ltd.* there cannot be the question of personal liability of the applicant as the receivers.

[6] It will be unjust to make the two receivers personally liable, being receivers appointed under Emergency Regulations, with the specific task to nurture CCB in the public interest, as this will certainly frighten away would be future receivers.

[Application allowed].

Awards referred to:

Cik Mariana bte Ghazali & 368 Ors., Tuan Rosli Bin Haji Kamarudin & 11 Ors., Encik Abdul Razak Bin Abu Bakar & 148 Ors. and Co-operative Central Banl Ltd. (In Receivership) [1989] 2 ILR 497 (Award No. 204/89)

Co-operative Central Bank Ltd. v. Wong Pot Heng [1989] 2 ILR 4 (Award No. 104/89)

Cases referred to:

Wong Pot Heng v. The Co-operative Central Bank Ltd. (Supreme Court Civil Appeal No. 02-307-1989) ***(foll)***

Bank Negara Malaysia v. Co-operative Central Bank Ltd. [1993] 3 MLJ 460; [1994] 1 MLJ 170 ***(foll)***

Thein Tham Sang v. United States Army Medical Research Unit & Anor. [1983] 1 MLJ 97 at p. 99 ***(refd)***

Legislation referred to:

Emergency (Essential Powers) Act 1979
Industrial Relations Act 1967

Other sources referred to:

Law Relating to Receivers, Managers and Administrators, Hubert Picarda, pp. 339, 373

For the 1st, 2nd & 3rd applicants - Peh Lee Kheng (P. Jayasingam with her); M/s. Shearn Delamore & Co.
For the 2nd respondent (Enclosure 39) - K.P. Gengadharan (N. Mahalimgam with him); M/s. Genga Maha Wong & Co.
For the 4th respondent (Enclosure 59) - L.G. Seah; M/s. P. Kuppusamy
For the 2nd, 3rd & 4th respondents (Enclosure 38) - Adam bin Bachek; M/s. Adam Bachek & Associates

JUDGMENT

Hj. Abu Mansor Bin Ali J:

In enclosure (6) dated 15 February 1990 the applicants applied for the following:

(1) An order of *certiorari* to remove into this Court for the purpose of it being quashed, the whole of the decision of the Industrial Court in Industrial Court Case No. 4/4-262/89, Industrial Court Case No. 4/4-270/89 and Industrial Court Case No. 4/4-271/89 (Consolidated), Award 204/89;

(2) An order of *prohibition* to prohibit the Industrial Court of Malaysia from proceeding or proceeding further in the matter of Industrial Court Case No. 4/4-262/89, Industrial Court Case No. 4/4-270/89 and Industrial Court Case No. 4/4-271/89 (Consolidated), Award 204/89;

(3) The costs of and incidental to this application be costs in the cause.

The 2nd and 3rd plaintiffs are receivers of the 1st plaintiff having been appointed by Court *vide* order dated 7 March 1989 with duties to manage and assume the duties of the directors of the 1st respondent. In its history the validity of the order was challenged (see p. 4 exhibit BA-1-9). The Supreme Court dismissed the appeal and confirmed the High Court's order of appointing them as receivers. To put their appointment in perspective it is worthy of mention that the 2nd and 3rd plaintiffs were appointed receivers under special circumstances and pursuant to the Emergency (Essential Powers) Act 1979.

At the Industrial Court hearing of this impugned matter or award objection was taken that leave had first to be obtained to bring the action against the 2nd and 3rd applicants/receivers. The learned Chairman of the Industrial Court dismissed the objection holding that leave

was not required. The learned Chairman also made an order that the 2nd and 3rd applicants be joined as a party to the pending action therein and the Industrial Court was prepared to hear the action on its merits after joining the 2nd and 3rd applicants/receivers. Hence this application before this Court *vide* enclosure (6).

It is not disputed by all appearing that essentially the issues before this Court in enclosure (6) are as follows:

(i) Was leave necessary before the 2nd and 3rd applicants/receivers can be sued?
(ii) Did the Industrial Court err in law in joining them as parties in their personal capacities?

The applicants' Counsel Cik Peh Lee Kheng contended that the Industrial Court had so erred in making the order he did. She cited the **Law Relating to Receivers, Managers and Administrators** by Hubert Picarda as to the status of 2nd and 3rd applicants at p. 339:

> A receiver, in the words of Viscount Haldane LC, 'is an officer of the Court put in to discharge certain duties prescribed by the order appointing him'. ... He is 'nothing more than the hand of the Court'. ... for the purpose of holding the property of the litigants, ... and the possession of the receiver is simply the possession of the Court.

Then at p. 373 of the textbook is given in para 27:

> 27. Suit without leave is contempt of Court and will be dismissed. A suit against a receiver when filed without leave of Court is liable to be dismissed...
>
> Institution of proceedings against a receiver without leave of the Court is contempt of Court. It is incompatible with the dignity and authority of the Court to allow its officer to be summoned before any tribunal...

Then in *Co-operative Central Bank Limited v. Wong Pot Heng* [1989] 2 ILR 4 when dealing with a preliminary objection held that no action shall be allowed to be prosecuted against a receiver without the leave of the Court.

Then in *Wong Pot Heng v. The Co-operative Central Bank Ltd.*, Supreme Court Civil Appeal No. 02-307-1989 the Supreme Court dismissed appellants' appeal and held that leave to sue a receiver is required. This Court in *Bank Negara Malaysia v. Co-operative Central Bank Ltd.* [1993] 3 MLJ 460 have held that leave is required before action can be commenced against a receiver.

I find merit in the argument of the applicants' Counsel that the authorities are too clear to be deviated from that leave is required before action is commenced against the 2nd and 3rd applicants.

I also dismissed as without merit the argument of the respondents that the requirement of obtaining leave before commencing an action is not borne out by any provision of the law and equally I find devoid of merit the respondents' argument the requirement of obtaining leave fetters the Minister of Human Resources' power to refer and the time taken to ask for leave prevents the matter being litigated without delay.

The decision of the Supreme Court must be accorded respect by this Court following judicial precedents. Provisions exist in the High Court Rules where leave must be obtained for *certiorari* or for contempt and leave must be obtained within a specified time before time-bar, all these provisions requiring leave first remains valid and had been consistently followed without difficulty and I find no merit in the argument of the respondents that the workers' rights will be hindered or obstructed by the plaintiffs/applicants having first to obtain leave.

In view of the fact that the Industrial Court had acted on wrong principles that leave is not required in such clear law and the decided cases the Court holds that leave is a condition precedent to bringing an action against the receivers.

On this ground alone this Court finds that the Industrial Court had committed an error in making an order that leave is not required for the receivers to be sued. The award in question is Award 104/89.

The Court is mindful that in *certiorari* the proper approach is to enquire into the decision making process. It is not an appeal.

The Industrial Court in arriving at its decision to make that order ignored completely a current decision of the Supreme Court and went to apply a decision of India on a provision not even in *pari materia* with the relevant Malaysian provision. The said decision ignored what had been stated in *Thein Tham Sang v. United States Army Medical Research Unit & Anor.* [1983] 1 MLJ 97 at p. 99 where Hashim Yeop A Sani J. (as he then

was) held that the Industrial Relations Act 1967 of our country is unique and it has no equivalent in India or elsewhere and it is best the authorities there can only be used as guide. Here the decision of the Supreme Court on this matter stares us in the face. I therefore hold that the Industrial Court had committed an error and I therefore grant prayer (1) in terms of the motion in enclosure (6).

I now deal with the 2nd issue whether receivers can be joined as parties in their personal capacity. My short answer is, I apply my judgment in *Bank Negara Malaysia v. Co-operative Central Bank Ltd.* [1994] 1 MLJ 170 and at p. 174 in this matter there cannot be the question of personal liability. The substance of which was they were appointed under the Emergency Regulations with a specific duty or task to perform, to nurture the said Co-operative Society to health with all public interest element as to the reason for their appointment and they work subject to the directions of the Central Bank and the Courts. From this they must formulate their actions and perform their difficult tasks within that constraint and framework. It is unjust to make the 2nd and 3rd applicants personally liable in the circumstances and if that were to happen it would certainly frighten away would be future receivers who genuinely wish to come and help in this rescue operation. Bearing in mind what I have stated above, I also hold that the Industrial Court had committed an error in making them parties with the clear intention of making them liable. I allow the 2nd prayer of the application in terms of the motion with costs, to the applicants with liberty to respondents to apply as to the question of costs.

WONG AH HEE @ WONG AH MOOI & ANOR.

v.

LOW TUCK HOONG

HIGH COURT, TAIPING
DATO' HAJI ABDUL MALIK BIN HAJI ISHAK JC
[CIVIL APPEAL NO. 11-16-92(92)]
13 SEPTEMBER 1993

PRACTICE AND PROCEDURE: Application to amend statement of defence and to include three new defendants and counterclaim - Amendment introducing new cause of action - Whether new cause of action founded on same or substantially same facts as original cause of action - Relief sought in the proposed amendment were never cited in original claim - Order 15 r. 1(5) Subordinate Court Rules 1980 - Whether Magistrate acted outside scope of the rules of Court under amendment.

STATUTORY INTERPRETATION: Construction of statutory provisions - Scope and duty of Court - Whether Court has power to fill gaps - Function of Legislature.

LAND LAW: Indefeasibility of title or interest in land - Whether indefeasibility absolute - Registered title or interest may be set aside or defeated by one with a better title and under exceptions - Jurisdiction of Court - Sections 340 and 417 of National Land Code 1965.

This was an appeal against the order of the learned Magistrate, Magistrate's Court, Sungai Siput (U) which allowed the application of the respondent/defendant to amend the statement of defence and to include three new defendants and a counterclaim.

Held:

[1] The amendments sought for by the respondent/defendant would entirely change the original suit and substitute it with a new cause of action. Rule 5 of O. 15 of the Subordinate Court Rules 1980 couched in clear and unambiguous words would clearly bar the reliefs sought for by the respondent/defendant.

[2] Generally, all amendments ought to be allowed for the purpose of determining the real question in controversy between the parties to any proceedings or of correcting any defect or error in any proceedings. In this case, the learned